

No. 10941

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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In the Matter of the Petition for Naturalization of  
FONG CHEW CHUNG,  
FONG CHEW CHUNG,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Northern District of California  
Southern Division

FILED

JAN 18 1945

PAUL P. O'BRIEN,  
CLERK



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Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

MESSRS. GUS C. RINGOLE,

709 Central Tower,  
703 Market Street,  
San Francisco, California.

JOHN A. SINCLAIR,

Russ Building,  
235 Montgomery Street,  
San Francisco, California.

Attorneys for Petitioner and Appellant.

MESSRS. FRANK J. HENNESSY,

United States Attorney,  
Northern District of California,  
Post Office Building,  
San Francisco, California.

EDGAR R. BONSALE,

Designated Examiner,  
630 Sansome Street,  
San Francisco, California.  
Amicus Curiae.

Attorneys for Appellee.

U. S. Department of Justice  
Immigration and Naturalization Service

No. 22 M. 9236

CERTIFICATE OF ARRIVAL

I Hereby Certify that the immigration records show that the alien named below arrived at the port, on the date, and in the manner shown, and was lawfully admitted to the United States of America ~~for permanent residence~~ as "Merchant's Son".

Name: Fong Chew Jung

Port of entry: San Francisco, California

Date: August 11, 1927

Manner of arrival: "President Lincoln"

I Further Certify that this certificate of arrival is issued under authority of, and in conformity with, the provisions of the Nationality Act of 1940 (54 Stat. 1137), solely for the use of the alien herein named and only for naturalization purposes.

In Witness Whereof, this Certificate of Arrival is issued March 2, 1944

For the District Director

LORENE M. CARTER

Lorene M. Carter

Chief, Mail, Files, Records  
and Information Section.

Certificate of Entry #59355.

Form N-215 [1\*]

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\*Page numbering appearing at foot of page of original certified Transcript of Record.



(Decision of Judge St. Sure—reported in 56 Fed. Sup. 17)

Original (To be retained by Clerk of Court)

United States of America

No. 7194-M

PETITION FOR NATURALIZATION

(Filed under Section 701 of the Nationality Act of 1940)

To the Honorable the District Court of the United States at San Francisco:

This petition for naturalization, hereby made and filed respectively shows:

(1) My full, true, and correct name is Fong Chew Chung

(2) I now reside at 1238 Stockton St., San Francisco, San Francisco, Calif.

(3) I was born on Jan. 1, 1908 in Hot Ping, Kwong Tung, China

(4) My personal description is: Age 36 years; sex M; color Yellow; complexion Olive; color of eyes Brown; color of hair Black; height 5 feet 4½ inches; weight 128 pounds; visible distinctive marks None; present nationality Chinese.

(5) I am not married. (6) I have no children.

(7) I emigrated to the United States, its Territories, or its possessions, from Hong Kong, China.

(8) My lawful admission to the United States, its Territories, or its possessions, was at San Francisco, Cal. under the name of Fong Chew Jung on

Aug. 11, 1927, on the Pres. Lincoln as shown by the certificate of my arrival attached to this petition.

(9) I entered the U. S. Army on Dec. 18, 1942, under Serial No. 39034977 and am at this time still in such service, serving honorably (or I was honorably discharged on . . . . .).

(10) I am not, and have not been for the period of at least 10 years immediately preceding the date of this petition an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government. I am attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. It is my intention in good faith to become a citizen of the United States, and to reside permanently therein.

(11) Submitted herewith as a part of this, my petition for naturalization, are the affidavits of at least two verifying citizen witnesses required by law.

(12) Wherefore, I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America.

(13) I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, that the same are true to the best of my own knowledge, except as to matters therein stated to be alleged upon informa-

tion and belief, and that as to those matters I believe them to be true, and that this petition is signed by me with my full, true name: So help me God.

FONG CHEW CHUNG

AFFIDAVIT OF WITNESSES

The following witnesses, each being severally, duly, and respectively sworn, depose and say:

My name is Gus Ringole, Attorney, I reside at 709 Central Tower, SF, Cal.

My name is Leland Kim Lau, Ins. Broker, I reside at 1220 Powell St., SF, Cal.

I am a citizen of the United States of America; I personally know the petitioner named in this petition for naturalization to be a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, as shown by official service records.

I do swear (affirm) that the statement of facts I have made in this affidavit of this petition for naturalization subscribed by me is true to the best of my knowledge and belief: So Help Me God.

G. C. RINGOLE

LELAND G. KIMLAU

Subscribed and sworn to before me by the above-named petitioner and witnesses in the respective forms of oath shown in said petition and affidavit in the office of the Clerk of said Court at San Francisco, Cal. this 29th day of April Anno Domini 1944.

I hereby certify that Certificate of Arrival No.

22M 9236 from the Immigration and Naturalization Service showing the lawful entry of the petitioner above named has been by me filed with, attached to, and made a part of this petition on this date.

[Seal] C. W. CALBREATH

Clerk

T. L. BALDWIN

Deputy Clerk

I certify that the petitioner and witnesses named herein appeared before and were examined by me on April 29, 1944 prior to the filing of this petition.

[Seal] ZELMA C. BENTON

U. S. Naturalization  
Examiner.

### OATH OF RENUNCIATION AND ALLEGIANCE

[Followed by printed form not filled in.]

Petition denied May 22, 1944 order not eligible.

Form N-410. U. S. Department of Justice. Immigration and Naturalization Service. (Edition 4-10-42) [2]

(On the bottom and back of the Petition for Naturalization are the following:)

List 1653—4/29/44 & continued to May 1—1944 unable to speak English.

List 1656—cont to June 1—1944 May 12—44 filed Petnr's brief 5/17/44 filed U. S. Brief.

May 4—44 Gus Ringole appeared as atty ord. briefs filed Pet 10—10—5.

May 22 filed Opinion.

May 21—44 Filed Mot for reconsideration.

July 22 filed brief of John A. Sinclair Judge advocate Amer. Legion as Amicus Curiae and of authorities Petitioner.

Sept. 5—1944 Filed Opinion on denial of Petition for reconsideration and Order denying Petition for reconsideration.

Oct. 5—1944 filed Notice of Appeal.

[Endorsed]: Filed Apr. 29, 1944. [3]

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In the Southern Division of the United States  
District Court for the Northern District of  
California

No. 7194-M

In the Matter of  
The Petition for Citizenship of  
FONG CHEW CHUNG

Before: Hon. A. F. St. Sure,  
Judge.

REPORTER'S TRANSCRIPT

Monday, May 1, 1944,  
2:00 O'Clock P. M.

The Clerk: Next is the matter of Fong Chew Chung.

Mr. Bonsall: This is in the matter of the Petition for Citizenship of Fong Chew Chung, entitled No. 7194-M, filed in this court on April 29, 1944.

The Clerk: I will swear the interpreter and the applicant.

(Whereupon Mr. Leland Kim Lau was sworn to interpret from the English language to the Chinese language and from the Chinese language to the English language.)

The oath was then administered to the applicant through the interpreter.)

Mr. Bonsall: May the record show that

### FONG CHEW CHUNG

was sworn in this court on April 29, 1944

The Court: Yes. [4]

Mr. Bonsall: I will ask the applicant some questions.

(To the interpreter): You ask him these questions just as I give them.

The Interpreter: Yes.

Mr. Bonsall: Q. What is your name?

A. Fong Chew Chung.

Q. Where do you reside?

A. 1238 Stockton Street.

Q. Where were you born? A. China.

Q. Ask what town in China.

A. Canton, China.

Q. When did you enter the United States?

A. 1927.

Q. What month and day?

A. Seventh month, 23rd day.

Q. At what port did you enter the United States? A. San Francisco.

(Testimony of Fong Chew Chung.)

Q. On what vessel did you enter the United States?      A. Lincoln.

Q. What documents did you have in your possession when you arrived in the United States in 1927?      A. He was a son of a merchant.

Q. Did you have any certificate of identity?

A. He said he had a certificate.

Q. What happened to the certificate of identification?      A. He lost it.

Q. Have you ever been outside the United States at any time since August 11, 1927?      A. No.

Q. Have you ever been married?      A. No.

Q. Have you any children?      A. No.

Q. Have you ever been arrested or charged with crime at any time?      A. No.

Q. Did you ever serve in the armed forces of the United States?      A. Yes. [5]

Q. Do you have your discharge from such service?      A. Yes.

Mr. Bonsall: The petitioner exhibits discharge in the name of Fong C. Chung, Serial No. 39034977, Private, Company "C", 84th Infantry, Tng. Bn., 17th Inf. Tng. Regt.

Are you the Fong C. Chung shown in this document?      A. Yes.

(Testimony of Fong Chew Chung.)

Q. When did you enter the Military Service of the United States? A. December 26, 1942.

Q. Are you sure of that date in December?

A. Pretty sure.

Q. When was he discharged from such service?

A. August 5, 1943.

Q. August 5, 1943. Did he ever leave the United States? A. No, sir.

Q. On the back of the discharge appears the following notations: "Character: Very good." Then some initials. "Periods of active duty: None. Remarks: Hq. IRTC, Camp Roberts, California, July 19, 1943; not eligible for reenlistment or induction; no time lost under AW 107; soldier entitled to travel pay."

Do you know the reason that you were not recommended for reenlistment?

A. He don't even know that.

The Court: Q. Why were you discharged from the Army?

A. He says the Army claims that he does not know how to speak English.

Q. Well, what does he mean by that? That he did not understand the orders that were given to him? A. Yes, sir.

Q. Did you go to school? A. No, sir.

Q. Did anybody in the Army ask you if you would like to go to school? A. No, sir.

Q. I understand you have been in this country since 1927. A. Yes. [6]



(Testimony of Fong Chew Chung.)

Q. Have you been living in San Francisco all of the time?      A. Yes, sir.

Q. What have you been doing since you have been here?      A. Chinese grocery store.

Q. You mean to tell me you understand no English whatsoever?      A. Not very much.

Q. Well, have you understood anything that I have said?

A. Did not understand it very much.

Q. How old are you?

(To the interpreter): Now, don't ask this of the applicant, Mr. Interpreter.

(To the applicant): How old are you?

A. (No response.)

Q. Are you now listening to me? How old are you?      A. (No response.)

Q. Do you understand me?

A. (No response.)

Q. Savvy?

A. (Witness speaks in Chinese to interpreter.)

The Court: What does he say?

The Interpreter: He says, "What are you talking about?"

The Court: It seems strange to me that a man who has been in San Francisco since 1927 is not able to understand the English language, unless he is absolutely dumb.

(To the interpreter): You tell him that.

The Interpreter: He says he just didn't go to school.

The Court: What?

(Testimony of Fong Chew Chung.)

The Interpreter: He says he just didn't go to school.

The Court: Ask him if he went to school in China.

A. Yes, sir.

Q. Was this grocery store that you worked in in Chinatown, San Francisco? A. Yes, sir. [7]

Q. Have you any white patrons of that store?

A. Very little.

Q. Have you never attempted to learn the English language?

A. He didn't have time, he says.

Q. How old are you now?

A. Thirty-seven.

Q. Thirty-seven. You came here when you were twenty years old, is that right?

A. Yes, sir.

Q. You have been here 17 years, is that right?

A. Yes, sir.

Q. What wages did you receive while you were working in the store?

A. Sixty dollars a month.

Q. Did you get your board and lodging?

A. Yes, sir.

Q. Did you work for a relative?

A. There was partnership.

Q. Were you one of the partners?

A. Yes.

Q. How many partners were there?

A. Around 20 or 30.

Q. Partners? A. Yes.

Q. It was a cooperative store?

(Testimony of Fong Chew Chung.)

The Interpreter: What do you mean by that, Judge?

The Court: Everybody has a share; everybody takes an equal part of the profits.

A. There is some active and some inactive.

Q. Do I understand there were 20 or 30 who had shares in the store, and each one who shared took an equal share of the profits?

A. Yes, sir.

Q. Your partners got \$60.00 a month and you got \$60.00 a month, is that right?

A. Yes; the ones that were working there.

Q. Did those who weren't working there get paid, too?

A. No.

Q. And still they were partners?

The Interpreter: Sir?

The Court: And still they were partners? [S]

A. Yes, sir.

Q. What did they get out of it?

A. Well, in the event they made a profit, they shared in equal shares of the profit.

Q. That is, over the expense of running the business?

A. Yes.

Q. Did you get any money above the cost of running the business?

A. A little.

Q. How many active partners?

A. Twenty. That is, then, or now, at present?

Q. Yes; when he was active in it?

A. At that time?

Q. Yes. A. Prior to the war that is?

Q. Yes. A. Twenty.

(Testimony of Fong Chew Chung.)

Q. What kind of business did you do there?  
What did you sell?

A. General Chinese merchandise, your Honor.

Q. Did you sell vegetables? A. Yes.

Q. A grocery store? A. Yes.

Q. American groceries and Chinese groceries?

A. Mostly Chinese.

Q. What was your particular work?

A. Salesman, he says.

Q. Behind the counter, is that right? Selling goods behind the counter? A. Yes.

Q. Have you never had a desire to learn the English language?

A. I would like very much to learn English language, but I never got around—never had enough time to study, he says.

Q. What were you doing all of the time you were in the Army?

A. He was a cook, and general duty; that is, fatigue duty. You know, orderly.

Q. Who was your boss as cook?

A. American.

Q. And any Chinese besides yourself there?

A. Yes; he is the only Chinese.

Q. You mean to say you couldn't understand the orders that were [9] given you in the cookshop, or in the kitchen?

A. He answered, here is the point, what the cook want him to do, just like cutting up the vegetables and just direct him to do simple things in the kitchen.

(Testimony of Fong Chew Chung.)

Q. Do you know "potato" when you see it?

A. Yes.

Q. You say "potato" in English language.

A. Yes.

Q. Say it.

A. (In propria persona): Potato.

Q. What other American vegetables can you name in English? You know "cabbage"? "Cabbagey"?

A. Yes.

Q. How do you say it?

A. (In propria persona): Cabbagey.

Q. "Cauliflower"? You must have learned those things in your store. You would not have to go to a cook camp in the Army to learn those things. Tell me, what do you think about this discharge of yours; why do you think you were discharged? Ask him that: Why do you think you were discharged from the Army?

A. He told me he didn't even know.

The Court: He could take an attitude in the Army like, "I don't understand," and "I don't want to understand," and, of course, he could act the fool and be discharged. Now, I want to find out if that is what he was doing.

Q. Do you understand what I mean?

The Interpreter: Yes, your Honor.

The Court: What is your name?

The Interpreter: Kim Lau.

The Court: Have you lived here some time?

The Interpreter: Yes, sir.

The Court: Do you know this applicant?

(Testimony of Fong Chew Chung.)

The Interpreter: I know him through the Legion post. I have seen him around. I don't particularly know him.

The Court: You don't know him very well? [10]

The Interpreter: Not real well, I should say, but he comes into the post. I see him around. I have seen him in the store.

The Court: You don't belong to the company that owns the store?

The Interpreter: Oh, no.

The Court: Were you born here?

The Interpreter: Yes, sir.

The Court: You have talked with this man a great deal, have you?

The Interpreter: No; I never did talk to him a great deal.

The Court: Have you asked him about the matter? Have you asked him why it was he was discharged?

The Interpreter: Yes. He told me since he thinks he don't know how to speak English, that is why he was discharged. And Section 8—I don't know what Section 8 is in the Army Regulations—

The Court: What is Section 8 of the Army Regulations, Mr. Bonsall?

Mr. Bonsall: I don't know offhand, your Honor.

The Clerk: I think it is "Unsuitable for Military Service," your Honor.

The Court: "Unsuitable for Military Service."  
You might look that up, Mr. Bonsall, if you can.

(Testimony of Fong Chew Chung.)

The Interpreter: Was the decision on Section 8? I think I noticed that when I looked at it.

The Court: Have you had enough conversation with him to satisfy yourself as to the reason why he was discharged?

The Interpreter: Frankly, no, your Honor.

The Court: The point is this: I am wondering if he is a stupid man. [11]

The Interpreter: I don't think he is stupid. There are very few Chinese boys—I mean, in the sense of being stupid. Of course, he might not know the English language. To be stupid in that sense, that is stupid in that he doesn't understand anything, your Honor, I don't think that is it.

The Court: Is he stupid mentally?

The Interpreter: Stupid mentally?

The Court: Do you think he may be stupid mentally from your conversation with him?

The Interpreter: Well, now, I think he might be that way. The way I talked to him on different occasions, he seemed to be in a fog at times; when I tried to get something from him, he is not alert in his thinking.

The Court: Is he evasive at all?

The Interpreter: No; he is not stupid, your Honor. It seems to me he does not make up his mind quick; he doesn't think. That is, if you ask him a direct question, he is not alert in answering.

The Court: I am unable to understand how it is possible for him to be in this country for 17 years

(Testimony of Fong Chew Chung.)

and not know some English, or know enough English to get by in the Army. You would think that is so, wouldn't you?

The Interpreter: Yes.

The Court: I think if I were in China that long I certainly would have picked up enough Chinese to be able to get by. But he doesn't seem to have been able to do that. He is an intelligent-looking young man.

The Interpreter: Yes, he is intelligent-looking.

The Court: Did you want to get out of the Army?

A. No, sir; he did not apply for discharge. They just told him—— [12]

Q. Were you drilled at all? A. Yes, sir.

Q. How long? A. Four weeks.

Q. Did you get along all right in the drilling?

A. No, sir.

Q. Could you do the Manual of Arms?

A. Not very well.

Q. Why are you applying for citizenship?

A. He says he reads in the Chinese paper that the Government, he was entitled to that right of citizenship, in the Chinese paper, and he made a request, and then he just looked at the Chinese paper. You know, the Chinese boys tell him if anybody is discharged from the Army who were aliens, they are entitled to citizenship, and he thought he was entitled to that right, and he applied.

Q. What makes you think you are entitled to



(Testimony of Fong Chew Chung.)

citizenship when you are unable to serve in the armed forces? Ask him that.

(The interpreter speaks in Chinese to the applicant.)

The Court: Did he understand your question? What does he say?

A. He says if he is not granted that citizenship, it is all right with him.

Q. All right with him. Yes, I know. But tell me——

The Interpreter: That is the direct question he told me. Maybe he is getting a little irritated by the direct questioning.

The Court: Well, he must not be irritated. I don't want to irritate him; I only want to find out—I would like to know why he thinks he is entitled to citizenship, if he is unable to serve in the armed forces. Ask him that.

A. He says the Government has a law, so he claims, that after being in the Service for three months, a man was eligible for citizenship.

The Interpreter: Now, this is not what he told me; this is what my own observation is: You know how Chinese boys are, you [13] know, getting citizenship after they get out of the Army. They feel like conquering themselves, that you are entitled to citizenship. They all get together, and they tell things, just like to me. They have an Honorable Discharge. This is not what he told me; this is my own observation.

(Testimony of Fong Chew Chung.)

The Court: Repeat just what I say to him.

Q. This law was made for the benefit of those who enlisted in the armed forces of the United States and who were able to serve. Now, it appears that you are unable to serve, because you do not possess the requisite qualifications. That being so, I wonder why it is you think you are entitled to citizenship.

Do you think you could give him that question?

(The interpreter speaks in Chinese to the applicant.)

The Interpreter: He didn't give me any direct answer.

The Court: What did he say?

The Interpreter: He says if he is given his citizenship, it is all right; if he is not, it is——

The Court: All right?

The Interpreter: All right.

The Court: Q. If you are given citizenship you would be expected to perform the duties of citizenship, and if you are unable to speak English, or read English, or understand it at all, how can you expect to perform the duties of an American citizen?

(The interpreter speaks in Chinese to the applicant.)

The Interpreter: He does not answer me, your Honor.

The Court: What does he say?

The Interpreter: He just says if he is not given it he would——

(Testimony of Fong Chew Chung.)

The Court: What? [14]

The Interpreter: He would just let it off at that.

The Court: Tell him that the law requires that he must be a citizen in fact, as well as in name, and if he knows nothing of the English language and thinks only in Chinese, how can he act as a citizen of the United States. Ask him if he has ever thought of that. I want to know what he thinks about that; what his idea is.

(The interpreter speaks in Chinese to the applicant.)

Mr. Bonsall: May this discharge be introduced in evidence, your Honor, and copied into the record?

The Court: Yes.

Mr. Bonsall: I will see it is returned.

The Court: Just one minute.

Tell him that we will keep his discharge here for the purpose of copying it into the record, and that will be returned to him.

The Interpreter: Yes. (Speaks in Chinese with applicant.)

The Court: He did not make any answer to that last question.

The Interpreter: No.

The Court: Does he belong to the same post—

The Interpreter: Well, he belongs to the American Legion post, the Chinese American Legion post.

The Court: Are there many Chinese here who are in the same situation as he is?

(Testimony of Fong Chew Chung.)

The Interpreter: I think there is.

The Court: I cannot understand that.

The Interpreter: I think, your Honor, in our Chinese American Legion post, I think we would have to start a class in Americanism and school some of these boys. I think I will bring it before the next meeting and have a program for these boys; [15] see if we can help them.

The Court: You see how important it is. In this case, here is this young man who was willing to go into the Service; who was inducted into the Service. They find him in there, and they find they are unable to use him. What good is he? He would be no good as a soldier; he wouldn't be any good at all. If he is no good as a soldier, what good would he be as a citizen? Certainly he could not perform the duties of a citizen.

Do you know something about citizenship?

The Interpreter: Yes.

The Court: A citizen is required to perform some duty. As a citizen, what could he do? What could he do? He could not vote. He could not do anything. It seems absurd to me to admit a man to citizenship who was unable to perform the duties of a citizen.

However, I feel that I ought to look into the matter and find out as much about the case as I can, and look into the law, before deciding it.

The Interpreter: Yes, your Honor.

Mr. Bonsall: I had this thought in mind: Possibly he would be willing to go to school and learn to

(Testimony of Fong Chew Chung.)

read, and something about our Government. We could allow it to stand over for six months.

Ask him how he would feel about that.

The Court: Ask him if he would be willing to go to school if a school were organized as a result of the activities of your organization. Ask him if he would be willing to go to a school and learn to speak the English language, and learn something about our form of government.

(The interpreter speaks in Chinese with the applicant.) [16]

A. Yes.

The Court: Now, we will keep that in mind.

Would you prepare a brief memorandum for me on the matter, Mr. Bonsall?

Mr. Bonsall: Yes. I might read into the record the section under which he is filing, your Honor.

This petition is filed under Section 701 of the Nationality Act of 1940 as amended, reading as follows (reading):

“Sec. 701. Notwithstanding the provisions of Sections 303 and 326 of this Act, any person not a citizen, regardless of age, who has served, or hereafter serves honorably in the Military or Naval forces of the United States during the present war and who, having been lawfully admitted to the United States, including its Territories and possessions, shall have been, at the time of his enlistment or induction, a resident thereof, may be naturalized upon compliance with all the requirements of the naturalization

(Testimony of Fong Chew Chung.)

laws except that (1) no declaration of intention and no period of residence within the United States or any State shall be required; (2) the petition for naturalization may be filed in any court having naturalization jurisdiction, regardless of the residence of the petitioner; (3) the petitioner shall not be required to speak the English language, sign his petition in his own handwriting, or meet any educational test; and (4) no fee shall be charged or collected for making, filing, or docketing the petition for naturalization, or for the final hearing thereon, or for the certification of naturalization” [17] —

That is the pertinent section, your Honor.

The Court: It occurs to me that it might not help here so much if he did learn to speak English, because the case will have to be decided upon the facts and the law, as they existed at the time of his enlistment and his discharge, so it might not make any difference. That is to say, it might not help his case at all, even if he did get a sufficient knowledge of the English language to satisfy us that he knew something about our form of government. It might mean, however, that he would be entitled to re-enlistment.

I think we ought to, if we can, find out something from the Military authorities, as to the real reasons, not what they may consider legal reasons—good reasons; but what were the real reasons for the discharge of this man.

(Testimony of Fong Chew Chung.)

Mr. Bonsall: I think I should read into the record, along with the other section, this section, 704 (reading):

“The provisions of this title shall not apply to (1) any person who during the present war is dishonorably discharged from the Military or Naval forces, or is discharged therefrom on account of his alienage, or (2) any conscientious objector who performed no military duty whatever, or refused to wear the uniform: Provided, That citizenship granted pursuant to this title may be revoked as to any person subsequently dishonorably discharged from the Military or Naval forces in accordance with Section 338 of this Act; and such ground for revocation shall be in addition to any other provided by law.”

I thought the two sections should be read together, your [18] Honor.

The Court: Yes.

I think I better continue this until some other day, to give me an opportunity to think about the matter, and also to give the Government an opportunity to furnish me any additional evidence they may secure.

Mr. Bonsall: How long did your Honor have in mind to continue the matter?

The Court: I don't know. I would like to have you communicate with the military authorities.

Mr. Bonsall: That can be done probably tomorrow, your Honor.

(Testimony of Fong Chew Chung.)

The Court: To see what can be learned about the real reason, or if there is anything back of this discharge which is not disclosed by the papers.

Mr. Bonsall: I don't know whether the Army would give us all that information.

The Court: Well, it is very strange if they wouldn't tell us about it. I would be surprised that they wouldn't tell us about it.

Mr. Bonsall: We have not asked them; I am just wondering.

The Court: Yes. It is an important matter.

Mr. Bonsall: I have here a report from The Adjutant General showing the exact reasons why he was discharged.

The Court: Read it.

Mr. Bonsall: (reading):

“Statement of the Military Service of Fong Chew Chung, Army Serial No. 39034977.

“The record shows that Fong Chew Chung, Army Serial No. 39034977, was inducted into the Military Service 18 December 1942. He was honorably discharged 5 August 1943, pursuant to the provisions of Section 8 A R, 615- [19] 364, by reason of his ineptitude for the Military Service. It was reported that he could neither read nor write the English language.

“Statement of service furnished 4 April 1944, by authorization of the Secretary of War.

“J. A. ULIO

“Major General

“The Adjutant General.”



(Testimony of Fong Chew Chung.)

The Court: I don't know whether you read the enlistment record of the subject. Did you?

Mr. Bonsall: Yes, I did, your Honor.

The Court: Did you read what was on the reverse of it?

Mr. Bonsall: Yes, I did, your Honor.

The Court: All of it?

Mr. Bonsall: I thought I read everything that was pertinent. I may have overlooked something.

The Court: I was noticing here on the enlisted record the notations, "Military qualifications: Not qualified. Army specialty: None. Attendance at: None."

Mr. Bonsall: I felt that that probably could be copied into the record, that exhibit, your Honor.

The Court: Yes.

Mr. Bonsall: That was the reason I did not go into that.

The Court: Very well.

Mark it Exhibit 1 and have it copied into the record.

(The Honorable Discharge of Fong C. Chung was marked Exhibit No. 1, and in words and figures is as follows, to-wit:

(Testimony of Fong Chew Chung.)

“Army of the United States

(Army Insignia)

HONORABLE DISCHARGE [20]

This is to certify that

FONG C. CHUNG

39034977; Private, Co C, 84th Inf Tng Bn., 17th Inf  
Tng Regt. Army of the United States  
is hereby Honorably Discharged from the military  
service of the United States of America.

This certificate is awarded as a testimonial of  
Honest and Faithful Service to his country.

Given at Camp Roberts, California.

Date: August 5, 1943.

(sgd) ORVIS D. MATHEWS

Orvis D. Mathews

Lt. Colonel, Infantry

17th Infantry Training

Regiment Executive Officer

W.D., A.G.O. Form No. 55 January 22, 1943.

(Reverse)

### ENLISTED RECORD OF

(Last name) Chung (First name) Fong (Mid-  
dle initial) C. (Army serial number) 39034977  
(Grade) Private.

Born in Hoi Ping In the Country China.

Inducted<sup>1</sup> December 18, 1942, at San Francisco,  
California.

When enlisted or inducted he was 34 years of age  
and by occupation a Store Clerk.

(Testimony of Fong Chew Chung.)

He had Brown eyes, Black hair, Olive complexion, and was 5 feet 4½ inches in height.

Completed 0 years, 7 months, 18 days service for longevity pay. [21]

Prior service<sup>2</sup>: None.

Certification made for mustering out pay in the amount of \$200.00.

Accounts of R. H. Bradshaw, Col., F. D.

Office of the Finance Officer

Camp Roberts, California

Aug. 5, 1943

Final Statement

Paid in Full 66.76

LOUIS WEISS,

Lt. Col., F. D.

(sgd) N. G. SMITH, Jr.

N. G. Smith, Jr.,

2nd Lt., F. D.

Noncommissioned officer: Never.

Military qualifications<sup>3</sup>: Not qualified.

Army specialty: None.

Attendance at (Name of non-commissioned officers' or special service school): None.

Battles, engagements, skirmishes, expeditions: None.

Decorations, service medals, citations: None.

Wounds received in service: None.

Date and result of smallpox vaccination<sup>4</sup>: December 27, 1942; Immune.

Date of completion of all typhoid-paratyphoid vaccinations<sup>4</sup>: January 15, 1943; Completed.

(Testimony of Fong Chew Chung.)

Date and result of diphtheria immunity test (Schick)<sup>4</sup>: Not taken.

Date of other vaccinations (specify vaccine used)<sup>4</sup>:  
Tetanus Toxoid completed February 15, 1943.

Physical condition when discharged: Good.

Married or single: Single.

Honorably discharged by reason of<sup>5</sup>: Section VIII, AR 615-360, [22] Par 9, SO #170, (see remarks)

Character: Very good SBR.

Periods of active duty<sup>6</sup>: None.

Remarks<sup>7</sup> Hq. IRTC, Camp Roberts, California, July 19, 1943. Not eligible for re-enlistment or induction. No time lost under AW 107; Soldier entitled to travel pay.

Label Button for Hon. Disch. Mil. Personnel Issued this the 16 day of Feb. 1944 by the undersigned at Hq. S.F. Retg. & Ind. Dist., 444 Market St., San Francisco, Calif.

(sgd) S. B. RUSSELL

S. B. Russell

1st Lt., A.U.S.

Adjutant.

Signature of soldeir (prtd):

FONG C. CHUNG

Print of Right Thumb: (Thumb print)

(sgd) FRANCIS J. GROGAN

Francis J. Grogan

1st Lt., Infantry, Ass't Pers.  
Officer.

Apr. 29, 1944.

(sgd) E. R. BONSALL

Designated Examiner.

(Testimony of Fong Chew Chung.)

INSTRUCTIONS FOR ENLISTMENT  
RECORD

1. Enter date of induction only in case of trainee inducted under Selective Training and Service Act of 1940 (Bull. 25, W. D., 1940); in all other cases enter date of enlistment. Eliminate word not applicable.

2. For each enlistment give company, regiment, or arm or service with inclusive dates of service, grade, cause of discharge, number of days lost under AW 107 (if none, so state), and number of days retained and cause of retention in service for convenience of the Government, if any.

3. Enter qualifications in arms, horsemanship, etc. Show [23] the qualification, date thereof; and number, date, and source of order announcing same.

4. See paragraph 12, AR 40-210.

5. If discharged prior to expiration of service, give number, date and source of order or full description of authority therefor.

6. Enter periods of active duty of enlisted men of the Regular Army Reserve and the Enlisted Reserve Corps and dates of induction into Federal Service in the cases of members of the National Guard.

7. In all cases of men who are entitled to receive Certificates of Service under AR 345-500, enter here appointments and ratings held and all other items of special proficiency or merit other than those shown above.

(Testimony of Fong Chew Chung.)

INSTRUCTIONS FOR CERTIFICATE  
OF DISCHARGE

AR 345-470.

Insert name; as, 'John J. Doe,' in center of form.

Insert Army serial number, grade, company, regiment, or arm or service; as '1620302'; 'Corporal, Company A, 1st Infantry'; 'Sergeant, Quartermaster Corps.'

The name and grade of the officer signing the certificate will be typewritten or printed below the signature.

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Mr. Bonsall: When it is copied, it may be returned to the applicant, your Honor.

The Court: Yes.

Now, I will continue this until what date, Mr. Clerk? I think I will continue it at least a month. June 1st?

The Clerk: May we say at two o'clock on June 5th? [24]

The Court: No, I do not think I want any further hearing on it. If we do, we will notify the applicant.

The Clerk: June 1st.

The Court (to the interpreter): You are appearing merely as his friend?

The Interpreter: Just as an interpreter, your Honor.

The Court: Do you belong to the same post?

The Interpreter: Yes, your Honor.

The Court: In view of the fact you think there

(Testimony of Fong Chew Chung.)

are a number of persons in the post who are in the same situation that this applicant is, I think perhaps you might make the suggestion you have mentioned.

The Interpreter: Yes, your Honor, I will; I will bring that before the next meeting.

The Court: I shall look into this matter very carefully before deciding it, and if we learn anything different, anything additional, I will notify the applicant. He can be here, then, on June 5th; otherwise I may be ready to decide it at that time.

Mr. Bonsall: All right, your Honor. We will have an investigation made of that in this case.

The Court: Yes.

[Endorsed]: Filed May 22, 1944. [25]

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[Title of District Court and Cause.]

OPINION AND ORDER  
DENYING NATURALIZATION

Petitioner, a Chinese alien, makes application for citizenship under provisions of the Nationality Act of 1940 (8 USCA 1001) which read as follows:

“\* \* \* Any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States during the present war and who, having been lawfully admitted to the United States \* \* \* shall have been at the time of his enlistment or induction a resident thereof, may be naturalized upon compliance with all the requirements of the naturaliza-

tion laws except that (1) no declaration of intention and no period of residence within the United States or any State shall be required; (2) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner; (3) the petitioner shall not be required to speak the English language, sign his petition in his own handwriting, or meet any educational test; \* \* \*."

This is a case of first impression, and is of considerable importance because its determination will affect a large number of future applications of a similar [26] nature.

In *Schneiderman v. U.S.*, 320 U.S. 118, the Supreme Court said, "It is safe to assert that nowhere in the world today is the right of citizenship of greater worth to an individual than it is in this country. It would be difficult to exaggerate its value and importance. By many it is regarded as the highest hope of civilized men." The court held that the "priceless benefits" of citizenship once conferred upon an alien by judicial decree "should not be taken away without the clearest sort of justification and proof." Nor should this great privilege be lightly conferred.

Notwithstanding the law dispenses with an educational test in naturalization where applicants have served honorably in the armed forces during the present war, I will mention that the evidence shows that although petitioner has resided in this country for seventeen years, and has been engaged in business in San Francisco as part owner in a Chinese



grocery, he does not speak or read English and knows nothing about our form of Government . It was necessary to take his testimony through an interpreter.

Petitioner was inducted into the Army of the United States in December, 1942, and was given an honorable discharge in August, 1943. The following notation appears on his discharge: "Section VIII A.R. 615-360, not eligible for re-enlistment or induction."

The pertinent provisions of Section VIII Army Regulations 615-360 read: [27]

**"INAPTNESS OR UNDESIRABLE  
HABITS OR TRAITS OF  
CHARACTER**

"51a. Procedure. \* \* \* When an enlisted man——

"(1) Is inapt, or

"(2) Does not possess the required degree of adaptability for the military service after reasonable attempts have been made to re-classify and reassign such enlisted man in keeping with his abilities and qualifications, or

"(3) Gives evidence of habits or traits of character \* \* \* which serve to render his retention in the service undesirable, and rehabilitation of such enlisted man is considered impossible after repeated attempts to accomplish same have failed, or

"(4) Is disqualified for service, physically or in character, through his own misconduct,

and cannot be rehabilitated so as to render useful service before the expiration of his term of service without detriment to the morale and efficiency of his organization, his company or detachment commander will report the facts to the commanding officer.”

“55.

“a. Except as otherwise prescribed in b below, the discharge from the Army of the United States (blue) will be given.

“b. An honorable discharge from the Army of the United States will be given when, according to the approved findings of the board of officers required by paragraph 51c, the conduct of the enlisted man during his current period of service has been such as would render his retention in the service desirable were it not for his inaptitude or lack of required adaptability for military service. In such cases the discharge certificate will show that re-enlistment is not warranted.”

It will be noted that in every case but one, where a discharge is given for causes specified in paragraph 51a, a blue or dishonorable discharge is given. The exception is made where no element of misconduct or moral turpitude appears.

The stated policy of the War Department in proceedings for discharge appears in paragraph 52a:

“No man will be separated from the service prior to the expiration of his term of service for any of the causes enumerated in paragraph

51a unless the Government can obtain no useful service from him by reason of his mental, moral, or physical disqualification once such man has been accepted for service as an enlisted man in the Army of the United States." [28]

Petitioner contends that the fact that he received an honorable discharge brings him within the provisions of Section 1001. Section 1001 does not use the words "has been honorably discharged" but the words "has served \* \* honorably." The question presented for decision is whether petitioner has "served honorably" within the contemplation of the statute.

"To serve" has been variously defined as "to render services so as to benefit, help, or promote; as, to serve one's country, mankind" (Webster's New International Dictionary); "to promote the interest of"; "contribute to the wellbeing of"; "aid by kind or useful offices"; "to be of use or service to"; "to employ oneself in the interest of another and in obedience to his directions." (Funk & Wagnall's New Standard Dictionary). These definitions are particularly applicable to service in the armed forces. It was because of his inability to be of use or service to the Government that petitioner was discharged.

The bestowal of citizenship under Section 1001 is based upon and made a reward for useful service. If the Government could "obtain no useful service" from petitioner, how can it be said that he has "served honorably", or at all? His inaptitude was not something which developed during the

period of enlistment. It had always existed, which fact the army, after repeated and reasonable attempts to make use of him, was forced to recognize. After induction it was found that petitioner was mentally disqualified to [29] understand and perform any duties required of him.

In my opinion petitioner has not served honorably, or at all. He has failed to meet the requirements of the statute.

It is therefore Ordered:

The petition for naturalization is denied.

Dated: May 22, 1944.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Filed May 22, 1944. [30]

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[Title of District Court and Cause.]

### PETITION FOR RECONSIDERATION

The above named alien hereby petitions the above Court for a reconsideration of the order heretofore entered herein denying his petition for naturalization. This application is based on the following grounds:—

First—When the briefs were filed herein there was no definite issue of law then presented to which they could be directed, and thus the precise point made and discussed in the opinion of the Court herein was not fully argued.

Second—The honorable discharge of petitioner states: “This certificate is awarded as a testimonial of Honest and Faithful Service to his country.” His counsel did not call this statement to the at-

tion of the Court and consequently, the opinion is silent on its legal effect upon the question to which the opinion of the Court is directed.

Wherefore, petitioner prays that the order [31] heretofore made be set aside and the matter set down for further argument.

Respectfully submitted,

G. C. RINGOLE

Attorney for Applicant and  
Petitioner.

May 31, 1944.

(Acknowledgment of Service and Receipt of Copy.)

[Endorsed]: Filed May 31, 1944. [32]

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[Title of District Court and Cause.]

Gus C. Ringole

Central Tower

San Francisco, California

Attorney for Petitioner

Edgar R. Bonsall

Designated Examiner

Post Office Building

San Francisco, California

Amicus Curiae

OPINION ON DENIAL OF PETITION  
FOR RECONSIDERATION

ST. SURE, District Judge:

A further hearing was had in the above matter

upon application for reconsideration. The petition is based on two grounds: first, that when the briefs were filed there was no definite issue of law then presented to which they could be directed; and second, that the point made in the court's opinion was not fully argued.

I think the only legal issue that could possibly be presented is whether petitioner "served honorably" within the meaning of Section 1001, 8 USCA. From the face of the [33] record and a consideration thereof it appears to this court that he did not.

The second ground calls the attention of the court to the statement on petitioner's honorable discharge: "This certificate is awarded as a testimonial of Honest and Faithful Service to his country." I considered the effect of these words in making the decision. I concluded that when construed with petitioner's record while an enlisted man and the Army Regulation governing his discharge, these words are ineffective and not binding on the court so far as concerns the present proceeding. The very reason for the discharge as set forth in petitioner's army record negatives the idea that petitioner has served in any way within the contemplation of the statute. I am mindful of the fact that the army has issued to applicant a paper designated as an honorable discharge. It speaks for itself so far as applicant's separation from the army is concerned, but its language does not per se entitle the bearer to citizenship. Only the law can do that, and quite clearly the law is against the applicant. As I have endeavored to show in my opinion, I think that both

the statute and the record show that applicant's petition for citizenship must be denied.

The principal argument of counsel for petitioner is that the court is bound by the action of the War Department in awarding an honorable discharge, and that such action is not subject to review, nor may it be set aside.

This court did not base its order on a claim of jurisdiction to usurp the power of the War Department, nor did it question the status of petitioner as the holder of an honorable discharge. If Section 1001 of Title 8 USCA [34] included in the designation of those entitled to citizenship the words "any person who has been honorably discharged" the court would have no alternative other than to admit petitioner.

It appears on the face of petitioner's discharge that it was awarded under the provisions of Section VIII of Army Regulations, 615-360. By examining the regulations referred to, the court was not questioning the action of the War Department but attempting to determine the circumstances under which the discharge was granted as shown by the reference on the discharge itself. It was found that an honorable discharge is granted under these regulations only when the Government can obtain no useful service from a soldier.

Although it may be unnecessary, but because of the importance of the case, I wish to say that I have no prejudice whatsoever against applicant because he is an alien Chinese; for upwards of half a century I have known and liked the Chinese as indi-

viduals and as a people. At the hearing I observed the petitioner on the witness stand. He appeared to me to be above the average in intelligence. He has been in the mercantile business in San Francisco for seventeen years.

I cannot escape the feeling that after his induction into the army petitioner found that he did not like it and resolved to get out, if possible. To accomplish such purpose, he shrouded himself in that imperturbable stolidity, easily recognized by Westerners who know Chinese, assumed an attitude of "Me no sabe," and there he stood as immovable [35] as a rock. If I am correct in my conclusion in this regard, then, the petitioner practiced a fraud upon the Government and under no circumstances would he be entitled to citizenship. If on the other hand, petitioner is just plain dumb, and the "Government can obtain no useful service from him because of his mental \* \* disqualification," he would not be entitled to the great gift of citizenship, as Congress never intended such an absurd consequence upon the adoption of the Nationality Act.

The petition will be denied.

August 30, 1944.

[Endorsed]: Filed Sep. 5, 1944. [36]



In the United States District Court for the North-  
ern District of California, Southern Division

No. 7194-M

In Re

FONG CHEW CHUNG,  
Petition for Naturalization

ORDER DENYING PETITION FOR  
RECONSIDERATION

Ordered:

The petition for reconsideration is denied.

Opinion filed.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed Sep. 5, 1944. [37]

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[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the above named Fong Chew Chung hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the order made and entered herein on May 22, 1944 denying said petitioner's petition for naturalization, and from the order made and entered herein on September 5, 1944 denying the petition for recon-

sideration of the order denying petitioner's petition for naturalization.

Dated: September 15, 1944.

G. C. RINGOLE

JOHN A. SINCLAIR

Counsellor for Petitioner and  
Appellant.

(Acknowledgment of Receipt of Copy.)

[Endorsed]: Filed Oct. 7, 1944. [38]

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[Title of District Court and Cause.]

PRAECIPE

To the Clerk of Said Court:

Sir:

Please prepare transcript of record on appeal in the above cause and to include:

1—Appellant's petition for naturalization on the appropriate form.

2—Transcript of testimony of May 1, 1944.

3—Opinion of court dated May 22, 1944.

4—Appellant's petition for reconsideration dated May 31, 1944.

5—Opinion of court denying petition for reconsideration dated August 30, 1944.

6—Notice of appeal.

G. C. RINGOLE

JOHN SINCLAIR

Attorneys for petitioner and  
appellant

[Endorsed]: Filed Nov. 30, 1944. [39]

District Court of the United States  
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 39 pages, numbered from 1 to 39, inclusive, contain a full, true, and correct transcript of the records and proceedings in the Matter of the Petition for Citizenship of Fong Chew Chung, No. 7194-M, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$5.90 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 8th day of December, A. D. 1944

[Seal]

C. W. CALBREATH

Clerk

By E. VAN BUREN

Deputy Clerk [40]

[Endorsed]: No. 10941. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Petition for Naturalization of Fong Chew Chung. Fong Chew Chung, Appellant vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed December 11, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

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In the United States Circuit Court of Appeals  
In and For the Ninth Circuit

No. 10941

In Re

FONG CHEW CHUNG

Petition for Naturalization

STATEMENT OF POINTS RELIED  
ON UPON APPEAL

1. The Honorable District Court erred in denying petitioner and appellant's petition for naturalization.

2. The Honorable District Court erred in holding that a civil court has a right to review the administrative determination of appropriate military authority.

3. The Honorable District Court erred in holding that the court could go behind the discharge of a soldier duly issued by appropriate military authority to determine the character of service of a soldier.

4. The Honorable District Court erred in holding that an honorable discharge issued by appropriate military authority to a soldier is not conclusive of the character of service of a soldier.

Respectfully submitted,

G. C. RINGOLE

Attorney for Petitioner and  
Appellant.

Service of the within Statement of Points Relied On Upon Appeal and receipt of a copy thereof is admitted this 27 day of December, 1944.

FRANK J. HENNESSY

United States Attorney

[Endorsed]: Filed Dec. 27, 1944. Paul P. O'Brien, Clerk.

